IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WP(C).No. 16463 of 2007(I)

PETITIONER:

P.RAJAMMAL, DISTRICT FORMS OFFICER,
KOLLAM, AGED 52, WIFE OF LATE RADHAKRISHNAN,
RESIDING AT SARASWATHY VILASOM, KALLAMPALLY
SREEKARYAM P.O., ULLOOR VILLAGE,
THIRUVANANTHAPURAM TALUK.

BY ADV. SRI.JOHNSON GOMEZ

RESPONDENTS:
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1. **THE DIRECTOR OF PRINTING, OFFICE OF THE DIRECTOR OF PRINTING, THIRUVANANTHAPURAM.**

2. **T.PRASANNA KUMARI, DISTRICT FORMS OFFICER, DISTRICT FORMS STORE, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SMT. SUDHADEVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/10/2007 ALONG WITH WPC NO. 18887 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.16463/2007 I

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PROCEEDINGS OF THE DIRECTOR OF PRINTING NO.3818/07/E8 DTD. 11/05/2007.**

EXT.P2: **COPY OF THE PROCEEDINGS OF THE DIRECTOR OF PRINTING NO.3818/07/E8 DTD. 14/05/2007.**

EXT.P3: **COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT NO.11898/2004 SPL.CELL DTD. 28TH JULY, 2004.**

EXT.P4: **COPY OF THE REPRESENTATION DTD. 15/05/2007 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.**

/TRUE COPY/

P.A.TO JUDGE

KSS

V. GIRI ,J.

WP(C).Nos. 16463 & 18887 of 2007

Dated this the 31st day of October, 2007

JUDGMENT

A modified order of transfer, which came about within two days of an original order of transfer is impugned in both these writ petitions. The contention of the petitioners are also common. Therefore they have been heard and the petitions are being disposed of by this common judgment.

2. Writ Petition 16463/2007 is taken as a leading case. The petitioner is a District Forms Officer in the Printing Department who had joined duty in the District Forms Office, Kollam on 30.6.2007. The petitioner is a widow and has two children. She, along with her children, is residing in Thiruvananthapuram. She, therefore, requested for a posting in Thiruvananthapuram. By Ext.P1 order, the petitioner was transferred and posted at Thiruvananthapuram.

3. The petitioner in Writ Petition No.18887/2007 was transferred from Ernakulam and posted at Kollam, in the place of the petitioner in Writ Petition No.16463/2007.

The contesting respondent in both the writ petitions, working as a Junior Superintendent, was promoted to the post of District Forms Officer and posted at Alappuzha in the then existing vacancy.

4. Ext.P1 order is dated 11.5.2007. Within two days from the date of Ext.P1, Ext.P2 order is passed which purports to be in partial modification of Ext.P1. Without any other reason being stated, the petitioner in Writ Petition No.16463/2007, Smt.Rajammal was shifted from Thiruvananthapuram to Alappuzha and the contesting respondent in both these cases was directed to be retained at Thiruvananthapuram. Ext.P2 order was challenged in Writ Petition No.16463/2007 and an order of stay was also granted. Thus, the petitioner therein is continuing at Kollam pursuant to the interim order passed on 30.5.2007. It directed her to be retained in the present station "until further orders". She had not been relieved pursuant to Ext.P2. Apparently, pursuant to the said interim order, petitioner in Writ petition No.16463/2007 was retained at Kollam and as

consequence thereof, Ext.P5 order in Writ Petition No.18887/2007 was passed directing the petitioner therein to be posted at Alappuzha where the contesting respondent was originally transferred. These orders are under challenge in the writ petitions.

5. The common contention raised in these writ petitions is that the order dated 14.5.2007 which modified the general transfer order dtd.11.5.2007 is passed at the influence of the contesting respondent. The writ petitioners were given a place of posting in Thiruvananthapuram and Kollam respectively accepting their request in that behalf. I am not able to discern any reason as to why the said order was modified, in such a manner, rejecting the request of the petitioners for the purpose of accommodating the contesting respondent at Thiruvananthapuram. It is noteworthy that the contesting respondent was transferred and posted at Alappuzha pursuant to her promotion. Consequently, she normally could not have had any grievance in relation to the said order of transfer. Assuming that she had any grievance,

her remedy was to move the government or the head of the department to seek a variation in the posting. The manner in which Ext.P1 order of transfer is *"partially modified"* is disturbing and no reasons are afforded by the respondents in justification of the same.

6. There is no counter affidavit by the contesting respondent in both these cases. Nor is there any counter affidavit by the State. In effect the averments in the writ petitions stand uncontroverted.

7. Taking note of the fact that Ext.P1 order is modified within a period of two days and taking note of the further fact that no explanation is even attempted to be offered in justification of the same, I am constrained to hold that Ext.P2 is vitiated by an arbitrary exercise of power.

8. For these reasons, the writ petitions are allowed. Ext.P2 in Writ Petition No.16463/2007 as also in Writ Petition No.18887/2007 is set aside as a consequence thereof. Ext.P5 order in Writ petition 18887/2007 is also set aside. The posting of the

petitioners in both the cases and the contesting respondent herein, for the time being, will be regulated, as noted in Ext.P1 order in both the cases.

V. GIRI, JUDGE

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